

**REPORT - PLANNING COMMISSION MEETING  
November 18, 2004**

**Project Name and Number:** Ly Rezoning (PLN2005-00036)

**Applicant:** City of Fremont

**Proposal:** To consider an application for a Rezoning of a parcel located between Roberts Avenue and Wildflower Common from R-G-29 and R-1-6 to R-3-18 for consistency with the City's General Plan and certified Housing Element

**Recommended Action:** Recommend to City Council

**Location:** 41975 Roberts Avenue

**Assessor Parcel Number(s):** 525-611-56

**Area:** 12,030

**Owner(s):** Suzie Ly

**Environmental Review:** An initial study and mitigated negative declaration were prepared and circulated for this site

**Existing General Plan:** Medium Density Residential, 15 to 18 dwelling units per acre

**Existing Zoning:** R-1-6, Single-Family Residential; R-G-29, Garden Apartment Residence District

**Existing Land Use:** One single-family residence and one detached accessory structure

**Public Hearing Notice:** Public hearing notification is applicable. A total of 94 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Haven Avenue; Colfax Court; Ronald Avenue; Howe Court; Lenelle Court; Wildflower Common. Fremont Boulevard; Lindsay Court; Roberts Avenue and Blacow Road. The notices to owners and occupants were mailed on November 5, 2004. A Public Hearing Notice was delivered to The Argus on November 1, 2004, to be published by November 4, 2004.

**Executive Summary:** The subject property has a dual zoning with half of the property designated R-1-6 (single-family residential, 6,000 square foot lot minimum) and the other half of the property designated R-G-29 (Garden Apartment Residential, 2,900 square feet of land area per unit). The General Plan designation is Medium Density Residential 15 to 18 dwellings per acre, which is consistent with the R-G-29 portion of the property. This application will bring the entire parcel into conformance with the General Plan by placing the property under a single zoning that corresponds with the General Plan designation. In addition, the applicant is requesting the parcel be rezoned to the new R-3 zoning district to allow more flexibility in the design and setbacks for the future development on the site.

**Background and Previous Actions:** The lot was created with the approval of Parcel Map 2760, in 1978. Although the property has a Roberts Avenue address, legal access to the subject site is provided via Wildflower Common, a private street that serves a 36-unit condominium development built on the adjacent properties to the west of the subject site. The subject site is located at the terminus of Wildflower Common.

The property contains a single-family residence that was built in 1955, one year prior to the City's incorporation. There is also a 500 square foot detached accessory structure located in the rear yard that appears to be a secondary dwelling unit. Although the applicant states that this building is not currently being used as a secondary dwelling, it is still considered to be an illegal structure because the City does not have records on file for the installation of a bathroom and wet bar located in this accessory structure. Because the structure is located six feet from the rear property line, where ten feet is the minimum setback, the applicant would be required to apply for a setback variance if the applicant wants to legally convert the accessory structure to a secondary dwelling. The accessory structure must meet all applicable provisions of the California Building Code and shall be subject to development impact fees.

The City Council adopted the R-3 multi-family residential zoning district in June 2003 to assist the City in meeting its regional housing needs. The Housing Element of the City's General Plan stipulates the application of the R-3 zoning district on a case-by-case basis to land designated for medium, high and very high density residential uses in the General Plan to facilitate and encourage the development of higher density housing. The standards adopted for the R-3 district are suitable for the City's remaining infill sites and provide developers with clear standards that also allow for flexibility. To facilitate high quality development, under the R-3 zoning district, all projects are required to receive Site Plan and Architectural Approval (SPAA) by the Development Organization. A staff level review is required for projects consisting of 10 units or less. Planning Commission review is required for projects with 11 units or more.

**Project Description:** The project consists of a rezoning of a 12,030 square foot parcel. The property is zoned R-1-6, Single-Family Residential and R-G-29, Garden Apartment Residence zoning district. The site's General Plan Land Use designation is Medium Density Residential, 15 to 18 dwelling units per acre. The applicant requests a rezoning to R-3-18, Multi-Family Residential zoning district to allow a greater range of flexibility in developing the site. Because the parcel has a dual zoning, this rezoning will also provide a uniform zoning designation for the entire parcel. The proposed rezoning to R-3-18 is consistent with the property's General Plan designation.

The adjacent property to the west of the project site has the same General Plan Land Use designation of Medium Density Residential, 15 to 18 dwelling units per acre and was developed as a 36-unit condominium complex. The adjacent property to the north of the project site has a General Plan Land Use designation of Medium Density Residential, 15 to 18 dwelling units per acre and was developed with single family dwellings (prior to the City's incorporation in 1956. The properties to the west and south of the subject site have General Plan designations of low-density single-family residential, 5 to 7 dwelling units per acre, and were developed as such.

This rezoning is consistent with the City's Housing Element policies for development of multi-family housing. The rezoning of the property to R-3-18 will facilitate future development of a multi-family project on the site at or above the midpoint of the density range (midpoint is 16.5 dwelling units per acre). In the near term, it is possible that the subject lot will be developed, by legalizing the secondary dwelling unit, a move towards achieving a higher residential density for the site.

### **Project Analysis:**

**General Plan Conformance:** The existing General Plan Land Use designation for the project site is Medium Density Residential, 15 to 18 dwelling units per acre. The proposed project is consistent with the existing General Plan Land Use designation for the project site because the proposed project implements Land Use Element Policies and Housing Element Programs. The following General Plan Goals, Objectives, and Policies are applicable to the proposed project:

- **Land Use Element Policy – LU 1.9:** To achieve a variety of housing types, the City has designated locations where moderate and higher density development is appropriate. Criteria for the location of higher density housing include access to transit, proximity to commercial areas, proximity to a collector or arterial street, and as a transition use where maximum flexibility in site design is required. For those areas where higher densities are indicated in the General Plan Diagram, construction of housing at significantly lower densities than planned would not meet the City's goals. The City therefore establishes a minimum required density of development for all medium and high density residential uses, as follows:
  - When the residential range is between 6.5 and 70 units per acre, and the development application has not been deemed complete for processing under the provisions of the Permit Streamlining Act by July 1, 2003, the minimum density of the project must be at the midpoint of the density range.
  - When calculation of the midpoint density results in a fraction of a unit equating to 0.50 or more, the minimum density shall be rounded up to the next whole number.

*Analysis: The proposed rezoning to R-3-18 is consistent with the existing General Plan Land Use designation of 15 to 18 dwelling units per acre and implements the policy mentioned above. Any multi-family development on the subject site would be required to adhere to the General Plan goals and policies, including the requirement that the project must satisfy the "midpoint of the density range."*

- **Land Use Element Policy – LU 1.22:** Multi-family housing units shall be developed with consideration given to the relationship to adjacent development. Particular attention should be given to the style of roofs, with flat roofs discouraged except where they are usable outdoor space.

*Analysis: The project site is adjacent to properties on the west and north with the same Medium Density Residential, 15 to 18 dwelling units per acre, General Plan Land Use designation. For the properties on the east and south, which have been developed with low density residential of 5 to 7 dwellings per acre, any proposed development of the subject site must be designed with consideration to such lower density development, with particular attention to roofing, massing, shadowing and privacy.*

*. The R-3 Multi-family Residential zoning district establishes appropriate architectural and site standards and guidelines to create a desirable multi-family residential development, as well as allow flexibility for consideration of the relationship to adjacent multi-family and single-family developments through the Site Plan & Architectural Approval process.*

- **Land Use Element Policy – LU 1.25:** Where another multi-family project is located on an adjacent parcel of land, a variety of architectural and site design treatments shall be encouraged. However, an architectural or landscape design theme for several parcels may be appropriate.

*Analysis: Through SPAA review, the project would be evaluated for compatibility with adjacent uses consistent with the policy above.*

- **Housing Element Policy – 3A:** Adopt appropriate land use regulations and other development tools to encourage the development of affordable housing, consistent with the Hill Area Initiative of 2002.
  - **Implementation 18:** The City will evaluate vacant and underutilized residentially designated parcels to identify sites, which could have an increased density and then undertake City-initiated General Plan changes and rezoning to higher densities.

*Analysis: To meet the City's regional housing needs share, the rezoning of a site will provide the opportunity for a multi-family development at a density anticipated by the Housing Element. The R-3-18 zoning designation is consistent with the site's existing General Plan Land Use designation of 15 to 18 dwelling units per acre. Any development on this site must be developed at a density between 16.5 to 18 dwelling units per acre, i.e. no less than the midpoint density as designated by the General Plan. Due to the location of the project site, the Hill Area Initiative of 2002 does not apply.*

**Zoning Regulations:** The project site currently has a zoning designation of both R-G-29 and R-1-6. The proposed project consists of a rezoning to the new R-3, Multi-family Residential district, where any development on this site would be required to comply with standards and guidelines adopted for the district, as well as all applicable building and zoning regulations. The following table represents lot and siting requirements.

<b>R-3-18 Zoning Lot &amp; Siting Standards</b>	
Maximum Building Height	52 feet
Minimum Lot Size	6,000 square feet
Minimum Lot Width	60 feet
Street Frontage	35 feet
Front and Street Side Setbacks	20 feet
Interior Side and Rear Setbacks	10 feet
Lot Coverage	50 percent
Minimum Common Open Space Area	500 square feet for up to 5 units, plus 50 square feet for each additional unit; one dimension at least 15 feet

The subject parcel has an unusual shape with an average width of 139 feet and a 100-foot average depth. The lot is 12,030 square feet lot size. Although the lot width exceeds the R-3 minimum lot width requirement of 60 feet, the lot does not contain right angles and it may be difficult to build the minimum number of dwellings on the site. Through SPAA, a multi-family project can be designed to fit with the character and scale of the existing neighborhood and its surroundings. Both R-G-29 and R-3 zoning districts permit continuous use of existing single-family residences.

**Environmental Analysis:** An Initial Study and Draft Mitigated Negative Declaration was prepared pursuant to guidelines of the California Environmental Quality Act, and circulated for this project. The environmental analysis identified concerns regarding potential impacts to potential soil liquefaction, air quality, cultural resources and noise generated by the future development of the project site. The Draft Mitigated Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. The mitigation measures shall be followed to reduce impacts to a non-significant level should any subsequent development occur. These mitigation measures have been included in the Mitigation Monitoring Program (MMP) that is recommended to be adopted and will apply to any project on the site. A more detailed description of the potential impacts is provided within the Initial Study for the project, which is included as an enclosure.

A finding is proposed that this project would not have a significant effect on the environment based upon the implementation of the identified mitigation measures. Accordingly, a Draft Mitigated Negative Declaration and MMP have been prepared for consideration by the Planning Commission.

The Initial Study conducted for the project has evaluated the potential for this project to cause an adverse effect, either individually or cumulatively, on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources because the project site is already developed. Based on this finding, a Certificate of Fee Exemption will be submitted with the Notice of Determination after project approval, as required by Public Resources Code section 21089 (see attachment to Draft Negative Declaration.) The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

**Response from Agencies and Organizations:** The Valley Transit Authority (VTA) has commented, indicating that they do not have concerns relating to the proposed project. No other response or comment has been received at the time of publication of this report.

**Response from Neighbors:** Two nearby residents contacted staff with their concerns regarding the potential impacts of future development on the subject site. Staff explained to the residents that this rezoning does not include a General Plan Amendment and also stated that the rezoning of the project would not result in any increase of density above what would be allowed had the project site been developed under its current zoning designation of R-G-29. The applicant's rationale for the rezoning is to provide flexibility in designing a site plan that will be accommodated on the unusually shaped property.

**Enclosures:** An Initial Study and Mitigated Negative Declaration were prepared for this project. No significant impacts were identified in the analysis of this project.

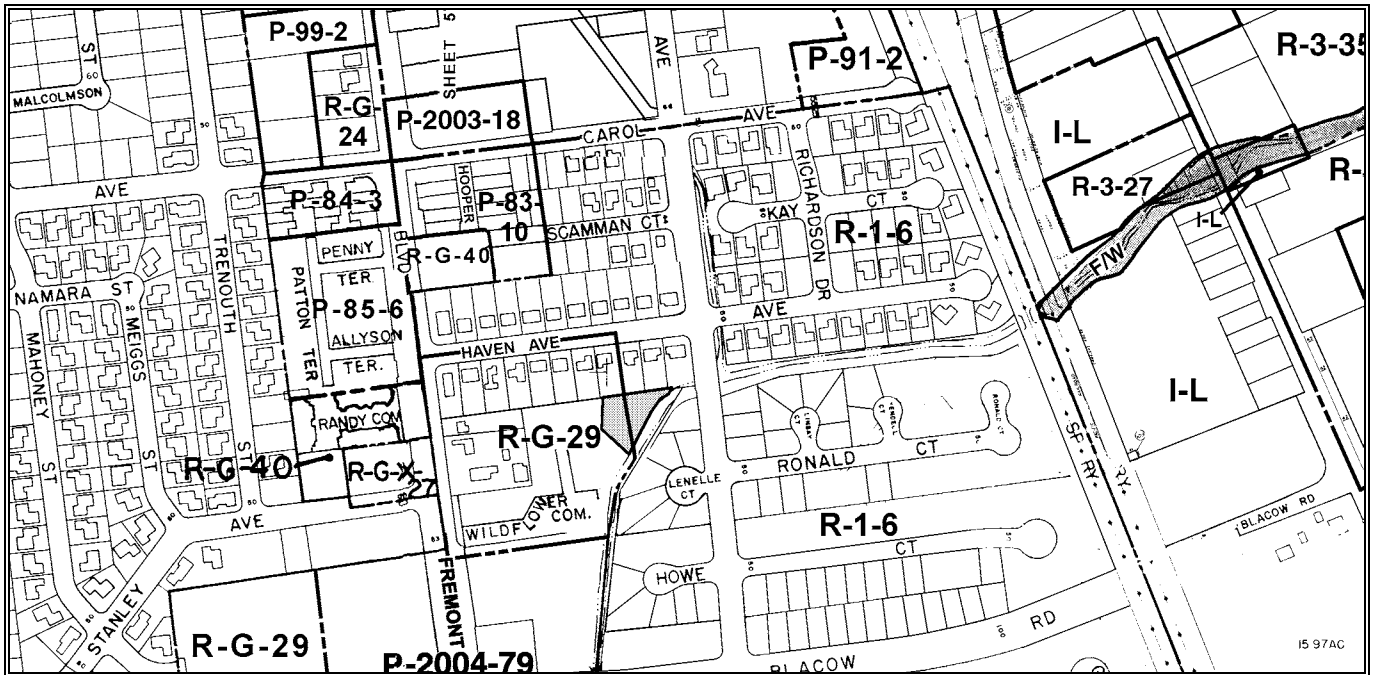
**Exhibits:** Exhibit "A" Rezoning Map

#### **Recommended Actions:**

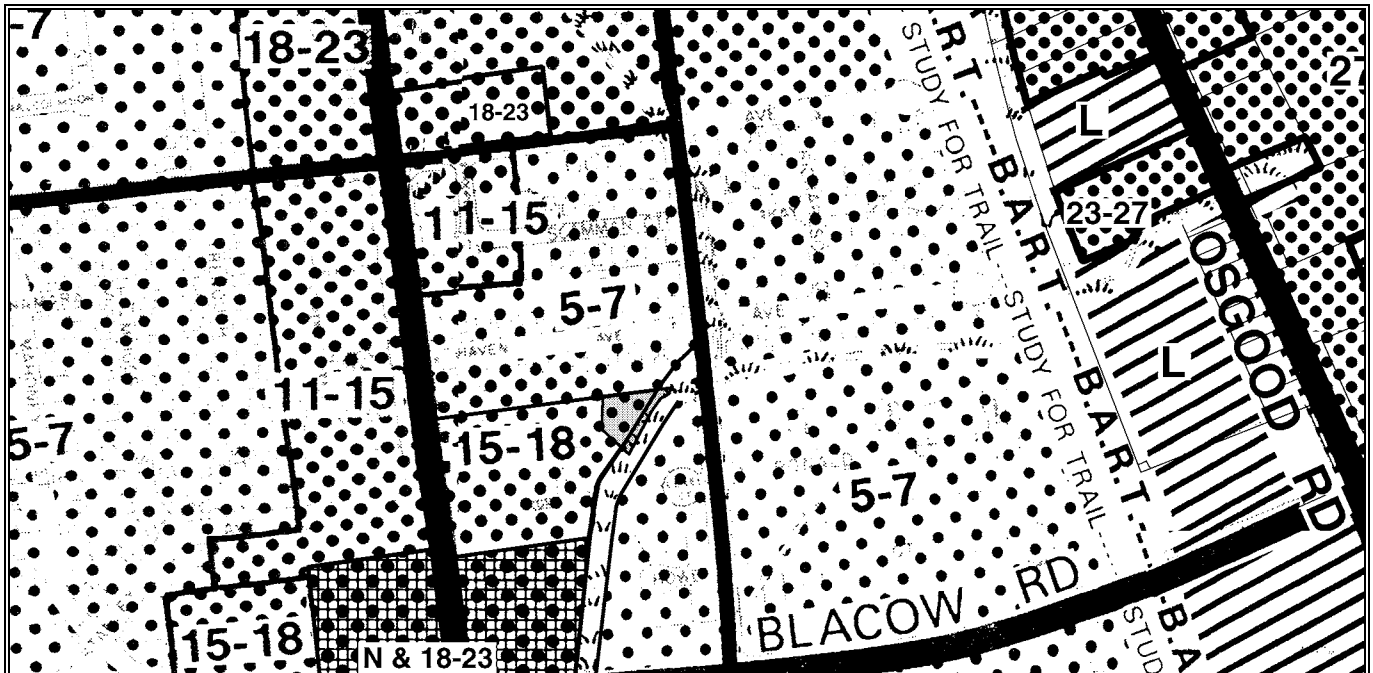
1. Hold public hearing.
2. Recommend the City Council find the Initial Study has evaluated the potential for this project to cause an adverse effect, either individually or cumulatively, on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. As a result, recommend the filing of a Certificate of Fee Exemption for the project.
3. Recommend the City Council adopt the Draft Mitigated Negative Declaration, and finding that this action reflects the independent judgment of the City of Fremont, and finding there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment.

4. Recommend to the City Council approval of the Mitigation Monitoring Plan for PLN2005-00036.
5. Find PLN2005-00036 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Housing Element Chapters as enumerated within the staff report.
6. Recommend PLN2005-00036 to the City Council in conformance with Exhibit "A" (Rezoning Map).

**Existing Zoning**  
Shaded Area represents the Project Site



**Existing General Plan**



# EXHIBIT "A"

Attached to and made a part of

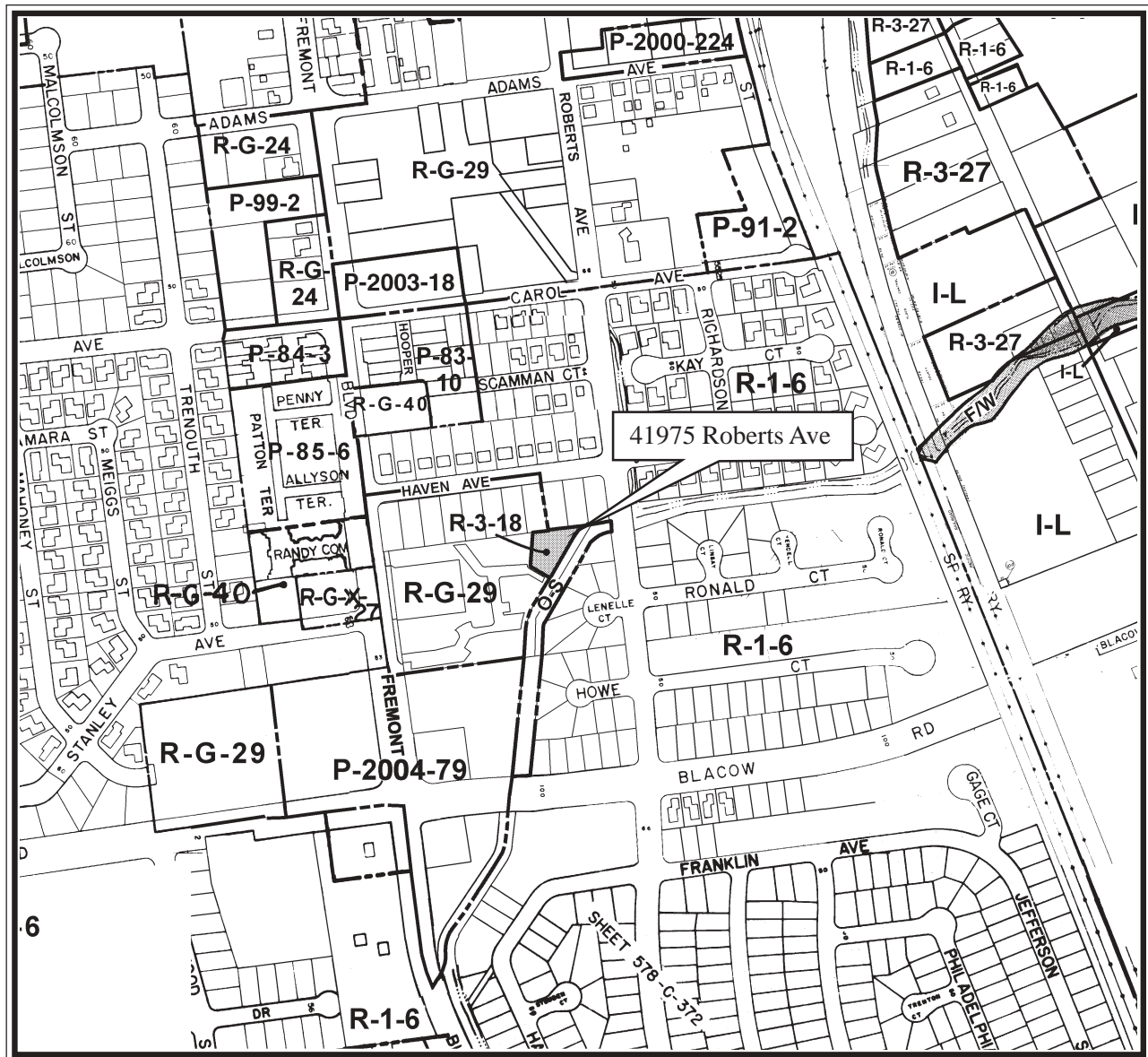
**Ordinance No.** \_\_\_\_\_

adopted by the City Council of the City of Fremont, California

**On the** \_\_\_\_\_ **day of** \_\_\_\_\_, **20** 05.

## ZONING MAP (SECTION)

AFFECTS ZONING MAP(S) FOR THE IRVINGTON PLANNING AREA



**From:** R-1-6 and R-G-29

**To:** R-3-18

**Project Name:** Ly Rezoning

**Project Number:** PLN2005-00036 (rez)

[pc on 11-18-2005] 72-376, 78-376

*Handwritten signature/initials*